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FILED
JUN 5 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

NO. 130

JOE C. STEPHENS, ET AL,
Petitioners,

vs.

ST. LOUIS UNION TRUST COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF.

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Commercial Recorder—Fort Worth, Texas—2-5396

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TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The petition of Joe C. Stephens, and twenty-five others similarly situated, respectfully shows:

A STATEMENT OF THE MATTER INVOLVED.

This Petition for Certiorari involves an important Federal jurisdictional question, which it is submitted the Circuit Court of Appeals for the Fifth Circuit has decided contrary to long-established decisions of this court. The Circuit Court of Appeals, in revers-

ing the District Court's judgment, sustaining Motions to Dismiss Respondent's Bill of Complaint for want of jurisdiction, held that, in determining whether the amount in controversy exceeds $3,000.00 exclusive of interest and costs, as required under Section 41, Title 28, U. S. Code Annotated, the controlling factor in this particular case was *not* the amount sought to be recovered against each of the twenty-six defendants, but was the "amount due under the default" or "the amount of default by the principal debtor," or "the amount involved in the principal demand" (all three expressions being used by the Circuit Court in its opinion. (R. 35-36).

It is the contention of Petitioners that the unprecedented rule announced by the Circuit Court of Appeals, for determining "the amount in controversy" in a diversity of citizenship case brought in the United States District Court, is contrary to the decisions of this Court in the cases of:

Ex Parte Phoenix Insurance Company, 117 U. S. 367;
Wheeler v. Cloyd, 134 U. S. 537;
Wheless v. St. Louis, 180 U. S. 379, 382.

The following are the salient facts involved in this action:

Respondent, St. Louis Union Trust Company, sued twenty-six defendants (Petitioners herein) in the United States District Court at Dallas, Texas, for $39,000.00 principal, and $7,350.00 interest upon an alleged joint and several guaranty, basing Federal Jurisdiction upon diverse citizenship. (R. 5).

The alleged liability grew out of a written guaranty (R. 5-10) given by Petitioners (26 of them) in favor of Respondent, St. Louis Union Trust Company, in connection with a loan made by First National Company, St. Louis, to Young Men's Christian Association of Fort Worth, Texas, in the sum of $100,000.00, evidenced by its eleven notes for $4,000.00 each and one f or $56,000.00, due at six months' intervals, and 14 interest notes, totaling $34,080.00 (R. 6), secured by a first mortgage deed of trust lien upon the Y. M. C. A. Building, and the 100 x 150 foot site upon which it stands, in the City of Fort Worth, Texas (Exh. "A"-R. 5). Inasmuch as the sole question presented in this Petition for Certiorari, concerns the jurisdiction of the District Court to entertain this suit, brought by St. Louis Union Trust Company on said "Guaranty," Petitioners feel justified in quoting the following provisions from the Guaranty Agreement, which it is thought are controlling upon the jurisdictional question presented:

> "Now, Therefore, in consideration of the premises and in order to induce said First National Company to make or procure said loan for itself or for the account of its clients or future holders thereof and for other good and valuable considerations, said undersigned guarantors, for themselves, their heirs, executors and administrators, do hereby, jointly and severally, guarantee unconditonally unto the St. Louis Union Trust Company, a Missouri corporation of St. Louis, Missouri, as trustee of an express trust, for the use and benefit of the holder or holders from time to time of the respective notes hereinbefore described,

its successors and assigns, the payment of all and singular the sums due and to become due on each and all of the said notes above described, both principal and interest, according to their respective tenor, purport and effect: Provided, however, that no signer of this guaranty shall be liable for a greater amount of principal or of interest than the amounts respectively, set opposite his signature, together with eight per cent (8%) interest per annum on so much thereof as he shall not pay when due." * * * (R. p. 8).

"In Witness Whereof, said undersigned have hereunto and to a duplicate copy hereof set their hands, and have subscribed against their respective signatures the several amounts of their respective guaranties for principal and interest aforesaid.

Signed in the presence of	Name of Guarantors	Respective Amounts of Interest Guaranteed	Respective Amounts of Principal Guaranteed
R. E. Squires	R. O. Dulaney	$1000.00	$1500.00
R. E. Squires	W. T. Ladd	1000.00	1500.00
R. E. Squires	C. P. Schenk	1000.00	1500.00
R. E. Squires	Wm. J. Baker	1000.00	1500.00
R. E. Squires	Littleton Harwell	1000.00	1500.00
R. E. Squires	Earl M. North	1000.00	1500.00
R. E. Squires	J. B. Baker	1000.00	1500.00
R. E. Squires	Joe C. Stephens	1000.00	1500.00
R. E. Squires	G. J. Stone	1000.00	1500.00
R. E. Squires	Harry B. Friedman	1000.00	1500.00
R. E. Squires	Amon G. Carter	1000.00	1500.00
R. E. Squires	John P. King	1000.00	1500.00
R. E. Squires	L. C. Abbott	1000.00	1500.00
R. E. Squires	John P. King, Jr.	1000.00	1500.00
R. E. Squires	Edwin E. Bewley	1000.00	1500.00
R. E. Squires	Willard Burton	1000.00	1500.00
R. E. Squires	Ben E. Keith	1000.00	1500.00
R. E. Squires	Edward A. Landreth	1000.00	1500.00
R. E. Squires	Chas. F. Roeser	1000.00	1500.00
R. E. Squires	E. O. Gillam	1000.00	1500.00
R. E. Squires	R. Ellison Harding	1000.00	1500.00
R. E. Squires	Wyatt C. Hedrick	1000.00	1500.00
R. E. Squires	Wiley G. Clarkson	1000.00	1500.00
R. E. Squires	Julien C. Hyer	1000.00	1500.00
R. E. Squires	Van Zandt Jarvis	1000.00	1500.00
R. E. Squires	Jesse James Walden	1000.00	1500.00"

(R. 10).

Respondent's suit was against all twenty-six guarantors, to recover a joint and several judgment, *not* for the $73,500.00 principal, and $7,350.00 interest due to June 1, 1935 (R. 4), *but* for $39,000.00 principal, plus $7,350.00 interest (R. 5); the $39,000.00 principal amount sued for obviously being 26 x $1,500.00, the respective principal amount guaranteed by each subscriber to the guaranty agreement (R. 5). The Young Men's Christian Association, principal obligor, was not made a party to the suit, nor was foreclosure sought of the first mortgage deed of trust lien upon the Y. M. C. A. Building and ground upon which it stands, securing the indebtedness sued upon.

Petitioners (defendants in the District Court) presented motions to dismiss Respondent's suit, on the ground that the amount actually in controversy, as to each of the Petitioners, was less than Three Thousand Dollars ($3,000.00), exclusive of interest and costs. (R. 11).

The District Court first overruled these motions to dismiss (R. 12-13), but later sustained them, dismissing Respondent's suit (R. 14-18) on the ground that the twenty-six (26) respective amounts of principal ($1,500.00), guaranteed by each signer of the guaranty, could not be "tied together" to confer jurisdiction upon the District Court to entertain the suit, inasmuch as one suit could be brought in a State Court of Texas by Respondent against all twenty-six defendants, thus avoiding a multiplicity of suits; and further, that Respondent's Petition filed in the District Court, did not charge a combination and conspiracy, or fraud; nor did same deal with a creditor's bill,

all of which constitute well recognized exceptions to the condemned "tying together of separate causes of action" rule, in order to confer jurisdiction. (R. 17-18).

Respondent appealed from the judgment of the District Court sustaining Petitioners' Motions to Dismiss for want of Jurisdiction, and upon hearing before the United States Circuit Court of Appeals at New Orleans, on January 4, 1941, the judgment of the District Court was reversed, the holding of the Circuit Court of Appeals being summarized in the concluding paragraph of its opinion, which reads:

> "There was a single contract of guaranty which all of the defendants signed and became parties to, in which they all promised the same thing to the guarantee, and as to him, that obligation was indivisible, except as to the limitation upon his right to require payment by any one of them of not more than $2500. The subject matter of the suit was this contract. The whole amount due thereunder as well as the extent of liability of each defendant, had to be determined by the lower court, and, having jurisdiction in view of the *amount involved in the principal demand*, it could and should decide all the other issues. The judgment is reversed and the cause remanded for further proceedings according to law." (R. 33-36).

Petitioners' Motion for Rehearing was overruled on March 8, 1941, (R. 49) and upon application of Petitioners, the court's mandate was stayed until April 7, 1941, and later extended to June 8, 1941. (R. 50-51).

JURISDICTION OF THIS COURT TO REVIEW.

This proceeding involves the correctness of the District Court's action in sustaining Petitioners' motions to dismiss Respondent's suit, because of absence of the required jurisdictional amount — the suit being one between citizens of different States (see Judgment of Dismissal, R. 19-20). The right of direct appeal to the Supreme Court of the United States, under Section 345, Title 28, United States Code, Annotated, having been removed under the Act of February 13, 1925 (See *Luckett v. Delpark*, 270 U. S. 496), Respondent appealed to the United States Circuit Court of Appeals, Fifth Circuit, which on January 4, 1941, reversed the District Court's order of dismissal, and on March 8, 1941 overruled Petitioners' Motion for Rehearing (R. 37).

A review of the Circuit Court of Appeals' judgment is sought by this Petition for Certiorari, under sub (a) of Section 347 Title 28, U. S. Code Annotated, which provides:

> "In any case, civil or criminal, in a Circuit Court of Appeals, * * * it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, * * * to require by certiorari, either before or after a judgment or decree by such lower court, that the case be certified to the Supreme Court for determination by it, with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The judgment of the Circuit Court of Appeals was entered January 4, 1941, and Petitioners' Motion for

Rehearing was overruled March 8, 1941, which constitutes the final judgment here appealed from. (R. 49). The three months' period, provided for in Section 350 of the Judicial Code, for the filing of this Petition for Certiorari, in the Supreme Court, therefore will not expire until June 8, 1941, prior to which date this Petition will be filed with the Clerk of this Court.

QUESTION PRESENTED.

The sole question presented in this Petition for Certiorari is:

This suit, being one between citizens of different states, and the acknowledged liability of each defendant beng expressly limited, under the Guaranty Agreement sued upon, to the payment of $1,500.00 of principal and $1,000.00 interest, did the District Court correctly hold that the twenty-six respective $1,500.00 principal amounts, for which each defendant was liable, could not be added or "tied together," in order to make the aggregate principal liability of all twenty-six defendants $39,000.00 (26 x $1,500.00), an amount within the Court's jurisdiction; the reasoning of the District Court being that the uniting of the respective liabilities of the several defendants, to bring the suit within the required jurisdictional amount, is permissible only to avoid a multiplicity of suits in the State Court, or where there is a charge of a combination, conspiracy or fraud, or in the case of a creditor's bill; none of which exceptions to the general rule, the District Court found was present in this case? or,

Was the Circuit Court of Appeals correct in holding that the jursdiction of the District Court to entertain Respondent's suit should be determined, *not* by the limitation of $1,500.00 in principal amount, which each defendant guaranteed, and for which each defendant was liable, and for no more, *but* by the "amount due under the default," or "the amount of default by the principal debtor," or "the amount involved in the principal demand?" (All three expressions being used in the opinion of the Circuit Court of Appeals).

Petitioners assert that the District Court's ruling on the jurisdictional question presented, was correct, for, in the absence of a fund, in excess of $3,000.00, in the court's possession for adjudication, or a charge of conspiracy, or a plea that this suit is brought in the District Court of the United States to avoid a multiplicity of suits which otherwise would result, if suit was required to be brought in the State Court, (none of which exists in this case), the respective causes of action against the several defendants (no one of which is itself within the jurisdiction of the District Court of the United States) cannot be tied together or aggregated in order to confer jurisdiction upon District court; and the Circuit Court of Appeals erred in sustaining jurisdiction on the ground that the amount in controversy was "the amount due under default," or "the amount of default by the principal debtor," or "the amount involved in the principal demand."

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

(Same as those set out in Motion for Rehearing).

Reason 1. The Circuit Court of Appeals erred in holding that the District Court had jurisdiction of this suit, on the theory, as stated in the Court's opinion, that it was necessary for the District Court to adjudicate (as a condition to recovery by plaintiffs against the several defendants of a maximum of $2,-500.00 each), "the amount due under the default," or "the amount of default by the principal debtor," or "the amount involved in the principal demand" (all three terms being used in the court's opinion); hence jurisdiction was determined by these amounts, rather than the $1,500.00 of principal for which each defendant was liable, and no more. Petitioners assert that this is not the correct jurisdictional test of "the amount in controversy."

Reason 2. The conclusion reached by the Circuit Court of Appeals, as stated in its opinion, that jurisdiction of the District Court is to be determined by "amount due under the default," or "the amount of default by the principal debtor" or "the amount involved in the principal demand" (all three expressions being used in the court's opinion), is equivalent to, asserting that the jurisdiction of the District Court will be determined by aggregating or tying together the several liabilities of each of the defendants, which in each case is limited to $1,500.00 principal and $1,-000.00 interest. In the absence of a fund, in excess of $3,000.00, in the court's possession for adjudica-

tion, or a charge of conspiracy, or a plea that this suit is brought in the District Court of the United States to avoid a multiplicity of suits which otherwise would result, if suit was required to be brought in the State Court, (none of which exist in this case) the respective causes of action against the several defendants (no one of which is itself within the jurisdiction of the District Court of the United States) cannot be tied together or aggregated in order to confer jurisdiction upon said court; and the Circuit Court erred in sustaining jurisdiction on the ground that the amount in controversy was "the amount due under the default," or "the amount of default by the principal debtor," or "the amount involved in the principal demand."

Reason 3. The Circuit Court of Appeals erred in holding that the District Court of the United States had jurisdiction to entertain this suit, because the amount in controversy was "the amount due under the default" or "the amount of default by the principal debtor" or "the amount involved in the principal demand" (all three expressions being used in the Court's opinion) for the reason that plaintiff did not sue to recover from the defendants either the "amount due under the default" or "the amount of default by the principal debtor" or "the amount involved in the principal demand," but, on the contrary, as stated by Judge Atwell of the District Court—

> "The plaintiff alleges that at the time of the institution of the suit, $73,500.00 was due on the principal, and $7,350.00 on interest. It sues for $39,000.00, which is the aggregate of the $1,500.-00 principal guaranteed by each of the twenty-six

signers, and for the sum of $7,350.00 interest 'which interest plaintiff prays be prorated among the defendants according to the terms of said contract of guaranty'."

It therefore clearly appears that plaintiff's suit is one for the recovery of $1,500.00 principal from each of the twenty-six defendants, or a total of $39,000.00, plus the prorata portion of the twenty-six defendants for $7,350.00 interest. Petitioners assert that jurisdiction of the District Court must be ascertained and determined from the allegations of plaintiff's pleadings, and, as stated, it not appearing that plaintiff sues to recover the "amount due under the default," or "the amount of default by the principal debtor," or "the amount involved in the princpal demand," but on the contrary, $1,500.00 in principal from each of 26 defendants, or a total of $39,000.00 in principal from all, the standards relied upon by the Circuit Court cannot constitute the jurisdictional test of "the amount in controversy."

Reason 4. The Circuit Court of Appeals erred in holding that the District Court of the United States had jurisdiction to entertain this suit, for the reason that the holding of said court is contrary to, and in conflict with the decision of the Supreme Court of the United States in *Ex Parte Phoenix Insurance Company*, 117 U. S. 367; in which case, suit was brought on a single instrument, by which it was adjudged an agent of several insurance companies named, bound them severally, (each for its proportionate share of one-fourth) to insure the property of Mrs. Helen M. Fitton for $12,000.00, and decree was rendered against each

company separately for $3,433.50. The right of appeal was denied by the trial court rendering said judgment, because the recovery against each of the defendants was less than $5,000.00, the jurisdictional amount required to appeal, and the Supreme Court of the United States, in sustaining the trial court's decision, held that the fact that suit was brought on a single insurance policy for $12,000.00, which provided for its apportionment among four companies, could not be availed of as a ground for justifying appellate jurisdiction. If the reasoning adopted by circuit court in the case at bar, had been followed by the Supreme Court, an appeal would have been allowed on the ground that the required $5,000.00 jurisdictional amount for appeal, should be determined not by the amount of the judgment sought to be, and recovered against each defendant, but by the fact, as stated in the opinion of the court, that, in order to recover, it was necessary to "allege, prove, have adjudicated, as a condition precedent to recovery, the amount of default" by all debtors, before there could be an apportionment between them, or, as expressed again by the circuit court, "The subject matter of the suit was this contract. The whole amount due thereunder as well as the extent of liability of each defendant, had to be determined by the lower court, and having jurisdiction, in view of the amount involved in the principal demand, it could and should decide all the other issues". The Supreme Court of the United States, however, held that the $5,000.00 jurisdictional amount, required for an appeal, was determined, not by the standards stated and relied upon in the opinion of the circuit court, but by the amount

of the respective judgments sought to be, and recovered against the several defendants, no one of which alone came within the required $5,000.00 jurisdictional amount.

Reason 5. The Circuit Court of Appeals erred in holding that the District Court of the United States had jurisdiction to entertain this suit, for the reason that the holding of this court is contrary to, and in conflict with the decision of the Supreme Court of the United States in *Wheeler v. Cloyd*, 134 U. S. 537, wherein the Supreme Court of the United States sustained a motion to dismiss the appeal, because the liability of no one of the defendants exceeded $5,000.-00 (the jurisdictional amount required for appeal), and their combined or aggregate liabilities could not be resorted to to sustain the right of appeal; the Supreme Court, in its opinion, stating:

> "It is clear that the appeal must be dismissed. The decree from which it is taken was not a joint decree, as is readily observed by a mere inspection of it. The liability of each one of the defendants under that decree can be neither increased nor diminished by any action on the part of any of his co-defendants. The right of every one of the defendants to appeal from the decree is separate and distinct from that of the other defendants. The amount adjudged against any one of them, in order that he might redeem his respective tract or tracts of land, does not in any case reach the amount necessary to give us jurisdiction to entertain the appeal. In no case is it $5,000.00."

Reason 6. The Circuit Court of Appeals in its opinion, in construing the guaranty contract sued upon,

after stating that "notwithstanding the limitation of maximum liability as to all defendants to $2,500.00 each, by the very terms of the guaranty, they bound themselves, *to that extent,* (italics ours) to pay all of principal and interest of the notes so guaranteed," erroneously concluded that this fact operated to confer jurisdiction upon the District Court to hear and determine this suit, whereas, appellees assert the contrary is true; for assuming the Circuit Court correctly concluded that the defendants did not jointly and severally guarantee the payment of *whole indebtedness* but, at most, only guaranteed the payment, *jointly* and severally, of $1,500.00 in principal and $1,000.00 in interest, the *joint obligation* of defendants is therefore limited to $1,500.00 in principal, which amount is far under the $3,000.00 amount required to confer jurisdiction upon the District Court.

Petitioners assert that the required jurisdictional amount is met *only when* the defendants are *jointly liable* for an amount in excess of $3,000.00 (exclusive of interest and costs) and not $1,500.00, as in this case.

Reason 7. Jurisdiction of a District Court of the United States, based upon diversity of citizenship and the requirement that the amount in controversy must exceed $3,000.00, exclusive of interest and costs, is, and should be strictly construed and applied in order to prevent the Federal Courts from usurping jurisdiction of controversies that rightly should be decided in the State Courts. The holding by the Circuit Court, as announced in its opinion, has no support by any other Federal Court; at least none is cited in the

Court's opinion. Appellees, therefore, assert that the opinion and judgment of this court is contrary to the general principle above stated, and in conflict with the guide post, established by the Supreme Court of the United States, in the case of *Di Giovanni*, 296 U. S. 64, wherein the following solemn warning was given:

> "Congress, by its legislation, has declared its policy that cases involving less than the jurisdictional amount be left exclusively to the State courts. * * * Courts of equity, in the exercise of their discretionary powers, should recognize this policy by scrupulous regard for the rightful independence of the State Governments, and a remedy infringing that independence, which might otherwise be given, should be withheld if sought on slight or inconsequential grounds."

WHEREFORE, Petitioners pray that, in the exercise of its discretion, this Court may issue its Writ of Certiorari to review the decision herein of the Circuit Court of Appeals, and for such other orders as may be appropriate.

Respectfully submitted,

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